

SAMPLE CHECKLIST ANSWERS FOR THE COMMONWEALTH ANTI-CORRUPTION BENCHMARKS

There is a separate Checklist for each of the 25 Commonwealth Anti-Corruption Benchmarks. These may be downloaded here from the Commonwealth website. These Checklists can be used:

- by governments and public sector bodies, as part of the audit and implementation process relating to the Commonwealth Anti-corruption Benchmarks. See the Audit and Implementation Roadmap for guidance on the methodology of the audit and implementation process and the purpose of the Checklists
- by civil society to measure the performance of their government and public sector bodies against the Benchmarks.

The Sample Checklist Answers (this document) provides guidance as to the types of answers that may be appropriate in the Checklists to various provisions of various Benchmarks. In these sample answers, if any BM provision does not apply to an organisation, the relevant row is marked as 'N/A' and the 'Score' column is left with no colour. In the 'Score' columns, the extent to which each listed BM provision is met by an existing Requirement or by existing Performance, is indicated by a colour code as per the table below:

SCORE:	
Fully compliant	
Compliant apart from in minor respects	
Partially compliant	
Non-compliant apart from in minor respects	
Fully non-compliant	

The following definitions apply to the Sample Checklist Answers:

- **Improvements:** Improvements necessary to ensure Requirements and Performance are compliant with the relevant BM provisions.
- **Performance:** Performance of functions by a government, an Implementing Organisation or their personnel.
- **Requirements:** Laws, regulations, policies and procedures that are applicable to a government, Implementing Organisation or their personnel.

The following notes explain how to complete the relevant columns of the Sample Checklist:

Note 1 (Column B: Audit): State “yes” or “no” as to whether each listed BM provision in Column A is fully complied with from a documentary perspective by an existing Requirement. If yes, identify the relevant Requirement. If no, state the Improvements required to Requirements to ensure compliance.

Note 2 (Column C: Audit): State “yes” or “no” as to whether each listed BM provision in Column A is fully complied with in day-to-day Performance. If no, identify the non-compliance and state the Improvements required to ensure compliance.

Note 3 (Column D: Implementation): Indicate nature of Improvement made to Requirements, as identified in Column B or otherwise, and date Improvement implemented.

Note 4 (Column E: Implementation): Indicate nature of Improvement made to Performance, as identified in Column C or otherwise, and date Improvement implemented.

Note 5 (Column F: Audit): State “yes” or “no” as to whether each listed BM provision in Column A is fully complied with from a documentary perspective by an existing Requirement. If yes, identify the relevant Requirement. If no, state the Improvements required to Requirements to ensure compliance

Note 6 (Column G: Audit): State “yes” or “no” as to whether each listed BM provision in Column A is fully complied with in day-to-day Performance. If no, identify the non-compliance and state the Improvements required to ensure compliance.

Note 7 (Column H: Implementation): Indicate nature of Improvement made to Requirements, as identified in Column F or otherwise, and date Improvement implemented.

Note 8 (Column I: Implementation): Indicate nature of Improvement made to Performance, as identified in Column G or otherwise, and date Improvement implemented.

BENCHMARK PROVISIONS		STAGE 1				STAGE 2				STAGE 3				STAGE 4			
		INITIAL AUDIT as at [state date initial audit completed]				IMPLEMENTATION OF INITIAL IMPROVEMENTS as at [state date implementation process completed]				ONGOING AUDIT as at [state date audit completed]				IMPLEMENTATION OF FURTHER IMPROVEMENTS as at [state date implementation process completed]			
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		Part 1 Initial audit of Requirement compliance		Part 2 Initial audit of Performance compliance		Part 1 Implementation of initial Improvements to Requirements		Part 2 Implementation of initial Improvements to Performance		Part 1 Ongoing audit of Requirement compliance		Part 2 Ongoing audit of Performance compliance		Part 1 Implementation of further Improve- ments to Require- ments		Part 2 Implementation of further Improvements to Performance	
No:	BM text	Audit (See Note 1)	Score	Audit (See Note 2)	Score	Implementa- tion (See Note 3)	Score	Implementa- tion (See Note 4)	Score	Audit (See Note 5)	Score	Audit (See Note 6)	Score	Implemen- tation (See Note 7)	Score	Implemen- tation (See Note 8)	Score
	EXAMPLE BM	SAMPLE ANSWER		SAMPLE ANSWER		SAMPLE ANSWER		SAMPLE ANSWER									
1.1(6)	Corruption offences: The following activities should be criminalised: 6) cartel activity	No. There is no law that specifically criminalises cartel activity. Some types of cartel activity could qualify as fraud under the Fraud Act 2012 if the conduct of the parties in the cartel was shown to be fraudulent, but this may not cover all types of cartel activity and may be hard to prove. <u>The Requirement compliance score is, therefore: non-compliant apart from in minor respects.</u> The 'minor respects' reflects the possibility that some types of cartel activities may qualify as fraud under the Fraud Act. <u>Requirement Improvements necessary to achieve full Requirement compliance:</u> Pass a new law that expressly addresses all types of cartel activity. See for possible reference for a new law the Cartel Act 2016 passed by [country name].		No. There is no law that criminalises cartel activity, therefore there is no Performance of this law. Although Column B records that the Fraud Act could in principle cover some types of cartel activity, the Fraud Act has never actually been used in the case of a cartel. <u>The Performance compliance score is, therefore: fully non-compliant.</u> <u>Performance Improvements necessary to achieve full Performance compliance:</u> a. Pass a new cartel law as per Column B. b. Effectively publicise, implement and enforce that law.		Yes. Cartel Act 2021 passed. Came into effect on 1 June 2021.		Yes. The new law has been publicised in a Press Release and in the National Gazette. Law enforcement officers are currently receiving training on this new law. The Anti-Corruption Authority has been tasked with communicating the new law to business. This is underway. There are no enforcement actions yet. This is to be expected as the law has just been implemented.									

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3.13(2)	Evidence: Evidence should be safely stored so as to safeguard it from corrupt interference, and access to and use of evidence should be strictly controlled and tracked	Yes. Section 132.4 of the Criminal Evidence Regulations fully complies with this provision. <u>The Requirement compliance score is, therefore: fully compliant.</u> <u>Requirement Improvements necessary to achieve full Requirement compliance:</u> None.		No. On the whole, evidence is safely stored in accordance with the Regulations. However, in the past 12 months, there have been 3 instances of evidence filed into the system not subsequently being able to be located. Compared with the number of instances of effective storage, these cases are very minor, and there was no evidence of deliberate failure in this regard, but it is still a failure in the system. <u>The Performance compliance score is, therefore: compliant apart from in minor respects.</u> <u>Performance Improvements necessary to achieve full Performance compliance:</u> a. Regularly remind personnel of the importance of safe storage of evidence. This should be done through annual emails and regular refresher workshops at a minimum at annual intervals. b. Regularly monitor, investigate and take necessary disciplinary action against personnel for breach.		N/A. Was compliant on initial audit.		Yes. Personnel have been reminded of the importance of safe storage of evidence by email and a refresher workshop was held on [date]. In future, there will be an annual email reminder and an annual refresher workshop. There have been no further cases of missing information.									

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4.3(4)	An independent body should be responsible for regulating and oversight of the employment and conduct of members of the judiciary in accordance with Benchmark 11 and 4.3(3) above	No. The Judiciary Act 2009 Section 46.3 establishes an Independent Judiciary Panel to appoint and oversee Court of Appeal and Supreme Court judges. However, all lower court judges are appointed and overseen by the Ministry of Justice, which is a government department and is accordingly not independent. <u>The Requirement compliance score is, therefore: partially compliant. Requirement Improvements necessary to achieve full Requirement compliance:</u> Amend the Judiciary Act 2009 Section 46.3 to cover all judges of whatever level.		No. <u>With respect to Court of Appeal and Supreme Court judges:</u> While there is a Requirement that complies with the BM provision in respect of Court of Appeal and Supreme Court judges, and while the Independent Judiciary Panel in general seems to operate effectively, there are two documented cases where the Minister of Justice has recommended to the Panel that a judge be dismissed. The Panel's decision in both these cases accorded with such requests. While the Panel's decisions were expressly stated in these cases as having been made independently of the Minister's request, this is an interference with the Panel's independence. The Performance score has accordingly been marked down to non-compliant apart from in minor respects. <u>In respect of lower court judges:</u> There is no Requirement complying with the BM provision and in practice these judges are not independently appointed and overseen. <u>The Performance compliance score is, therefore: non-compliant apart from in minor respects.</u> <u>Performance Improvements necessary to achieve full Performance compliance:</u> a. Expand the scope of Section 46.3 as per Column B and effectively publicise, implement and enforce that law. b. Cease all recommendations in relation to the judiciary from the Minister of Justice or any other public official, so that the decision of the Panel is actually independent and perceived to be independent.													

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9.14(1)(a)	Eligibility: Political candidates should be eligible to stand for public office only where: a. they have a close connection with the State of the election	Yes. The Elections Act 1998 complies with this provision. It requires all political candidates to be nationals of the state (i.e. a holder of the state passport). <u>The Requirement compliance score is, therefore, fully compliant.</u> <u>Requirement Improvements necessary to achieve full Requirement compliance:</u> None.		Yes. All political candidates have to provide a certified copy of their passport to the Election Supervision Office before being permitted to stand. The Election Supervision Office checks these records against the National Passport Database to ensure they are valid state passports. An audit of the Election Supervision Office after the last election by the National Audit Office found that these checks had been correctly and fully carried out. <u>The Performance compliance score is, therefore, fully compliant.</u> <u>Performance Improvements necessary to achieve full Performance compliance:</u> None.		N/A. Was compliant on initial audit.		N/A. Was compliant on initial audit.									
10.15 (5)	10.15 Management functions: The organisation should, in relation to the following management functions, implement procedures which minimise the risk of corruption, in accordance with the following Benchmarks: 5) Concession management: Benchmark 16	N/A The organisation has no concessions.		N/A The organisation has no concessions.		N/A The organisation has no concessions.		N/A The organisation has no concessions.									

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11.13(2)	Public officials should disclose, to an appropriate body designated for this purpose, all existing and potential conflicts of interest. Such disclosures should be made prior to appointment, and thereafter as and when any such conflicts of interest arise.	No. There is no Requirement for public officials to disclose a conflict of interest. <u>The Requirement compliance score is, therefore, fully non-compliant.</u> <u>Requirement Improvements necessary to achieve full Requirement compliance:</u> Pass a regulation that creates such an obligation. This type of requirement can be dealt with by way of Regulation; no law of this nature is required by Parliament.		No. There is no Requirement complying with the BM provision, and in practice there is no disclosure by public officials of conflicts of interest. <u>The Performance compliance score is, therefore, fully non-compliant.</u> <u>Performance Improvements necessary to achieve full Performance compliance:</u> a. Pass a regulation as per Column B. b. Effectively publicise, implement and enforce that regulation.		Yes. A Regulation in accordance with 11.13(2) has been published (Regulation 234 of 2021), and a conflict of interest policy and register has been established and published.		No. Numerous employees have declared their interests in the conflicts of interest register, showing some success of the new policy. However, an audit of the conflict of interest register, together with searches of the Companies Register and confidential discussions with employees, has identified several cases of senior employees not declaring in the conflict of interest register their ownership interests in companies that are or could be doing business with the organisation.									

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13.16(5)(c)	Single-source procurement: <i>Single-source procurement may be used only where and only to the extent that: c) it is essential for prescribed reasons of national security or emergency, and where such emergency was not foreseeable by the procuring entity and not due to delay on its part, and where Benchmark 13.16(9) has been followed</i>	Yes. Procurement Procedure 2015 Article 25.3 complies with the whole BM provision. <u>The Requirement compliance score is, therefore: fully compliant.</u> <u>Requirement Improvements necessary to achieve full Requirement compliance:</u> None.		No. Procurement Procedure 2015 Article 25.3 seems to be routinely ignored. Contracts seem to be placed without a competitive tender on the stated basis of an 'emergency', whose reasons are unsubstantiated or include justifications such as 'the roads are in bad condition and need urgent repair'. These justifications are outside the permitted circumstances, as the reason for defective roads is lack of routine maintenance, which is entirely foreseeable, and is caused by delay by the road authority in organising routine maintenance. <u>The Performance compliance score is, therefore: fully non-compliant.</u> <u>Performance Improvements necessary to achieve full Performance compliance:</u> Procurement Procedure 2015 Article 25.3 must be publicised, implemented and enforced.		N/A. Was compliant on initial audit.		No. The importance of compliance with Procurement Procedure 2015 Article 25.3 was publicised by a Board Statement dated []. However, since that Statement was published, three further cases of single source procurement have been identified, suggesting that the Board mandate either is being ignored against the Board's wishes or was not issued with any commitment by the Board to take steps to ensure compliance.									